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**IN THE
COURT OF APPEALS OF INDIANA**

MARY E. ALLISON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0605-CR-396
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Louis Rosenberg, Magistrate
Cause No. 49G99-0510-FD-176829

February 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Mary E. Allison was convicted of theft as a Class D felony. In this direct appeal, she challenges the sufficiency of the evidence presented to support her conviction. Concluding the State presented sufficient evidence to show Allison intentionally transferred free merchandise to customers without Marsh Supermarket's consent and therefore Allison exerted unauthorized control over Marsh's property, we affirm.

Facts and Procedural History

Allison worked as a cashier at a Marsh Supermarket in Indianapolis on September 16, 2005. Lorenzo Williams and Naomi Ealey were employed at the same supermarket on that date. At approximately 1:18 a.m., Williams and Ealey brought various items to be purchased to the checkout lane where Allison was working. During the transaction, some items were not scanned as Allison moved them across the scanner. Williams noticed that while Allison checked out the groceries, she did not scan two greeting cards, a six-pack of beer, cups, a fruit tray, ice cream and syrup.

No baggers were working at that hour. Williams went to the end of the counter and started bagging the groceries as they began collecting at the end of the counter. When Williams was bagging the beer, Allison told him to hurry up, double bag it, and place it in the bottom of the bags so no one would see what he was purchasing.

When it was time to pay, Ealey scanned her card, which caused the register to freeze. Allison told Williams to push his grocery cart toward the door so no one would see what was in the bag in the cart. Allison then called the nighttime manager for help with the register.

Later, Barbara Pokorzynski, a store manager, and Mark Orff, Safety and Security Investigator, reviewed a videotape of the transaction. They noticed that not all of the items Williams and Ealey brought to the counter appeared on the Transaction Summary Log Report that lists all of the items scanned at the cashier lane where Allison was working that night. Missing from the report were two greeting cards, a six-pack of beer, cups, a fruit tray, ice cream and syrup.

Orff interviewed Williams and Ealey individually. Both Williams and Ealey admitted to him that Allison gave them the free groceries. Ealey further admitted Allison had done this for her on thirty other occasions, some of which occurred before Ealey worked at the store. Williams and Ealey gave Allison no money and had not made any plan for them to receive free items.

On October 14, 2005, Allison was charged with theft as a Class D felony. She waived her right to a jury trial and the court conducted a bench trial on April 13, 2006. Allison was found guilty and sentenced to 365 days all of which was suspended with credit for two days served. Allison now appeals, challenging the sufficiency of the evidence supporting her conviction for theft.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of evidence supporting a conviction, the appellate court will neither reweigh the evidence nor judge the credibility of witnesses. Hayworth v. State, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). Rather, the court looks to the evidence most

favorable to the verdict with all reasonable inferences to be drawn from that evidence. Id. If there exists substantial evidence of probative value to support the verdict, and the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, the verdict will remain undisturbed. Id.

II. Evidence of Theft

Allison challenges the sufficiency of the evidence supporting her conviction for theft. She argues the State failed to prove she intentionally or knowingly engaged in the prohibited conduct.

Indiana Code section 35-43-4-2(a) provides that a person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony. Thus, in order to convict Allison for theft, the State had to prove Allison knowingly or intentionally exerted unauthorized control over the groceries, with the intent to deprive Marsh of the value of the items.

A person engages in conduct “knowingly” if, when she engages in the conduct, she is aware of a high probability that she is doing so. Ind. Code § 35-41-2-2(b). A person engages in conduct “intentionally” if, when she engages in the conduct, it is her conscious objective to do so. Ind. Code § 35-41-2-2(a). Intent may be proven by circumstantial evidence. Hayworth, 798 N.E.2d at 509 (citing Duren v. State, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999) trans. denied). Further, intent may be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points. Id. The

trier of fact is entitled to infer intent from the surrounding circumstances. Id.

Allison asserts the State failed to show that she acted with the necessary criminal intent when she failed to scan items presented to her by Williams and Ealey. She points to her testimony that the volume on the scanner at the checkout lane was prone to lowering beyond an audible level when heavy items were scanned. As a result, she states, she was not able to hear the beep indicating the items had been scanned when moving them across the scanner. Allison stated that this did not mean that the items were not being scanned. She asserts this evidence demonstrated she reasonably failed to scan the items as a result of human error that was not detectable to her.

Allison further asserts the attendant circumstances show she did not commit theft. She points out she received nothing of value from Williams or Ealey and made no plan to give them free items before the transaction. Also, she asserts the incident occurred during the confusion that resulted from her register freezing.

Our review of the evidence reflects that when the register trouble occurred, Allison had already completed scanning and had already given the property to Williams and Ealey. Thus, the register trouble could not have influenced her mental state during the prior conduct. With regard to Allison's argument that the incident is the result of mere human error, there was conflicting evidence from other witnesses. Pokorzynski testified that even at the lowest volume, the volume of the sound emitted by the register was an audible tone, and that the scanning device cannot be turned to an inaudible level except when the system is rebooted. When rebooted, it takes approximately two and a half minutes for the scanning device to

resume, during which time no one can scan items. Also, Ealey testified the scanners beep during each scan.

The transcript shows that Allison intended to deprive Marsh of the value of its property. When she gave Williams the non-scanned beer, she urged him to hurry-up, double bag the beer, and place it in the bottom of the cart. Also, after she summoned the nighttime manager to help with the frozen cash register, she told Williams to push the cart toward the door so no one would see what was in the cart. Ealey stated Allison had done the same thing about thirty times for them before. Further, the number of items that were not scanned suggests the incident was a deliberate act. Finally, when Orff interviewed Allison about the incident, Allison refused to cooperate and became irate and threatening.

These facts are sufficient to allow the trier-of-fact to conclude that Allison knowingly or intentionally exerted unauthorized control over Marsh Supermarket's property with the intent to deprive the supermarket of its value. Allison is asking this court to re-weigh the evidence. This is an invitation we must decline. The evidence was sufficient to show that Allison transferred free groceries to customers without Marsh Supermarket's consent and therefore Allison exerted unauthorized control over Marsh's property. Her instruction to Williams, her previous conduct, the number of items not scanned, and her reaction to the investigation constitute sufficient evidence to sustain the finding that she acted knowingly or intentionally with intent to deprive Marsh Supermarket of the value of the property.

Conclusion

Based on the foregoing, we conclude there was sufficient evidence presented by the State to prove beyond a reasonable doubt that Allison knowingly or intentionally exerted unauthorized control over Marsh Supermarket's merchandise. Accordingly, we hold the evidence was sufficient to support Allison's conviction for theft.

Affirmed.

BAKER, J., and DARDEN, J., concur.